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BY E-MAIL AND WEB POSTING

October 28, 2020

**TO: All Participants in the Consultation on Guidelines for Potential Projects to Expand Access to Natural Gas
All Other Interested Parties**

**RE: Potential Projects to Expand Access to Natural Gas Distribution:
Confidentiality of Filings
Ontario Energy Board File No. EB-2019-0255**

This letter sets out the Ontario Energy Board's (OEB) determination on a request for confidential treatment received from Enbridge Gas Inc. (Enbridge Gas) in respect of project information filed by proponents in the context of the request made to the OEB under section 35 of the *Ontario Energy Board Act, 1998* to collect and analyze information about possible natural gas expansion projects, and to report back to the Ministry of Energy, Northern Development and Mines (Ministry) to assist the government in its decision-making regarding funding for future expansion projects.

Enbridge Request for Confidential Treatment and Invitation to Comment

On March 5, 2020, following a stakeholder consultation process, the OEB issued its [final Guidelines for Potential Projects to Expand Access to Natural Gas Distribution \(Guidelines\)](#) that identify the information that was to be filed by interested project proponents for inclusion in the OEB's report to the Ministry. At that time, the OEB confirmed its intention to post proponent project information on the OEB website following the deadline for filing project information.¹

On July 17, 2020, Enbridge Gas filed a [letter](#) with the OEB requesting that all information related to projects proposed by it and by any other proponent be kept confidential and not be posted on the OEB's website as contemplated by the OEB or

¹ However, the OEB confirmed that it would not include in its report any proposed project from a proponent that does not hold a Certificate of Public Convenience and Necessity unless the Certificate holder does not bring forward a project for the same area, and that the OEB would not be posting project information for projects that are not included in the OEB's review.

made available pursuant to declarations and undertakings. The letter identified Enbridge Gas's rationale for its confidentiality request, including that the disclosure of the project proposals would be prejudicial to the Ontario government's discretion in this process and future processes, to proponents in the current process, to the privacy of potential natural gas customers, and to the safe operation of distribution systems. The letter also noted that, in Enbridge Gas's view, the publication of project information is not required for the OEB to fulfill the object, scope and purpose of the Ministerial request for the OEB to analyze the proposed projects.

By letter dated July 29, 2020, the OEB invited interested participants to comment on Enbridge Gas's request for confidential treatment and made provision for project proponents to reply to those comments.

The OEB indicated that until such time as it has made a determination on Enbridge Gas's request for confidential treatment, the OEB would not be posting project information on its website.

Summary of Comments

Participants - including potential project proponents - were generally not supportive of Enbridge Gas's confidentiality request, although it was noted by some that concerns around customer privacy could be addressed through redactions where necessary. Most participants noted that Enbridge Gas had a previous opportunity to express its concerns around confidentiality but did not do so, and some expressed the view that Enbridge Gas had provided insufficient justification for its request. Some participants noted that the principles outlined in the OEB's *Practice Direction on Confidential Filings* should apply and that the process should be open and transparent given that the natural gas expansion program is funded by ratepayers who deserve to understand how project proponents plan to use these funds. One participant commented that Enbridge Gas's request is anti-competitive. In their comments, OEB staff confirmed that any personal information within the meaning of the *Freedom of Information and Protection of Privacy Act* (FIPPA) cannot be part of the public record and must be redacted, and subject to that caveat identified certain categories of information that should be made public. While accepting that other information could potentially affect a proponent's competitive position, OEB staff questioned the extent to which this would be the case for Enbridge Gas given that it holds the vast majority of Certificates of Public Convenience and Necessity (Certificate) in Ontario.

In its reply, Enbridge Gas provided further information in support of its confidentiality request but agreed that certain elements of its project proposals could be placed on the public record in a summary document format, including: the name of municipality;

construction and in-service dates; expressions of support (redacted as required to remove any personal information and remove specifics of project locations); forecast customer attachments; total rate-payer-funded financial support required; estimated annual savings from converting to natural gas; and avoided greenhouse gas (GHG) emissions. However, Enbridge Gas maintained that detailed data or economic measures related to the viability of projects should remain confidential as disclosure of that information would place it at a disadvantage in any future competitive process, which in turn would not be in the interests of ratepayers.

The OEB's Determination

The OEB does not agree that all project information filed by project proponents should be treated as confidential, and notes that Enbridge Gas conceded in its reply that certain information could be placed on the public record. However, it is clear from the project information filed by interested proponents that the amount of ratepayer-funded financial support needed for those projects in the aggregate far exceeds the amount that the government has indicated it intends to make available at this time. The OEB therefore accepts that the disclosure of information related to the financial viability of potential projects could negatively impact Enbridge Gas's (or any other proponents') competitive position in any future gas expansion initiatives, the scope and specifics of which are unknown at this time. This would particularly be the case if any such future initiative does not provide a right of first refusal for the Certificate holder.² In the context of the task that has been set for the OEB in this matter, the OEB believes that its approach achieves an appropriate balance between transparency and ensuring that the competitive position of project proponents is not at risk.

The OEB has determined that it will not place data and economic measures related to the financial viability of projects on the public record. This includes the following (including supporting calculations):

- the total forecast of capital costs at the end of the rate stability period for each proposal
- the total forecast revenue requirement over the ten-year rate stability period
- rate base at the end of the rate stability period
- the profitability index (PI) without ratepayer-funded financial support

² The letter from the Minister of Energy, Northern Development and Mines and the Associate Minister of Energy dated December 12, 2019 requesting the OEB's report on potential gas expansion projects specified that if a proposed project is in an area where a Certificate exists, the proponent must be the Certificate holder unless the Certificate holder does not propose a project for the area.

Although this information will not be placed on the public record nor will it be included in the OEB's report, all of the project information filed by project proponents will be provided to the Ministry.

Subject to such redactions as may be required to remove personal information as defined in FIPPA, the OEB has determined that all project information other than data and economic measures related to the financial viability of projects will be placed on the public record for each project, including the following:

- the name of municipality, including the identity of communities and any on-reserve First Nation communities to be served
- expressions of support (redacted as required to remove specifics of project locations beyond the identity of the communities and on-reserve First Nation communities to be served)
- forecast customer attachments
- total ratepayer-funded financial support required to achieve the PI of 1.0
- estimated annual customer savings from converting to natural gas
- estimated avoided GHG emissions
- maps, redacted as required to remove information the disclosure of which gives rise to legitimate safety concerns
- construction and in-service dates
- OEB approvals required for the project and the application timelines
- copy of the Certificate for the area to be served, if held by the project proponent

Re-filing of Project Information

Project proponents are to re-submit their project information, redacted to remove: (i) any personal information as defined in FIPPA; (ii) information the disclosure of which gives rise to legitimate safety concerns; and (iii) data and economic measures related to the financial viability of projects as set out in this letter. Project proponents should make every effort to keep the redactions referred to in (ii) and (iii) to a minimum in order to maximize the information that will be placed on the public record.

Redacted project information must be filed by November 18, 2020 in accordance with the filing instructions set out below. The filing must be accompanied by a certification by a senior officer of the project proponent confirming, to the best of their knowledge, that the filing contains no personal information as defined in FIPPA and that the filing otherwise complies with the OEB's determination regarding confidentiality set out in this letter.

The re-filed project information will be posted on the OEB's website in due course.

Cost Awards

The OEB thanks all participants for their contributions. A Notice of Hearing for Cost Awards regarding the provision of comments on Enbridge Gas's confidentiality request will be issued separately.

Filing Instructions

All materials filed with the OEB must quote the file number, **EB-2019-0255**, and be submitted in a searchable / unrestricted PDF format with a digital signature through the OEB's web portal at <https://pes.ontarioenergyboard.ca/eservice>. Filings must clearly state the sender's name, postal address, telephone number, fax number and e-mail address. Parties must use the document naming conventions and document submission standards outlined in the [Regulatory Electronic Submission System \(RESS\) Document Guidelines](http://www.oeb.ca/industry) found at www.oeb.ca/industry. We encourage the use of RESS; however, parties who have not yet [set up an account](#), may email their documents to registrar@oeb.ca.

All communications should be directed to the attention of the Registrar at the address below and be received no later than 4:45 p.m. on the required date.

Email: registrar@oeb.ca

Tel: 1-888-632-6273 (Toll free)

Fax: 416-440-7656

DATED at Toronto, October 28, 2020

ONTARIO ENERGY BOARD

Original Signed By

Christine E. Long
Registrar